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Wilfrid LeBlanc

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MCANDREWS HELD & MALLOY, LTD
500 WEST MADISON STREET
SUITE 3400
CHICAGO, IL 60661

EXAMINER

WONG, WARNER

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mhmpto@mcandrews-ip.com

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte WILFRID LEBLANC

Appeal 2009-011114
Application 10/077,405
Technology Center 2400

Before ALLEN R. MACDONALD, JASON V. MORGAN, and
ERIC B. CHEN, *Administrative Patent Judges*.

MacDONALD, *Administrative Patent Judge*.

DECISION ON REQUEST FOR REHEARING

This is a decision on Appellant's Request for Rehearing. At page 2, lines 1-10, of the Request, Appellant contends that:

The Appellant requests a rehearing because the Decision seemingly misapprehends that "adjusting a duration of the time period" is NOT "a change in the playout rate" as taught by Agrawal. The Decision summarily affirms the Examiner's rejection based on this point.

Page 4 of the Decision correctly identifies that a "rate" is calculated as "a measured amount divided by a fixed time period (kb/s i.e., kilobits per second)." However, the Decision incorrectly applies the calculation of rate to the terms in the claims. The Decision states, "a change in the time period for playout (adjusting the deadline) is a change in the playout rate because it changes the measured amount over that fixed time period."

To apply the rate calculation to "playout," the Decision must be able to show a measured amount of data elements and a fixed time period over which those data elements are played out.

(Request 2:1-10). However, Appellant does not further elaborate on "the points believed to have been misapprehended or overlooked by the Board" as required by 37 C.F.R. § 41.52(a)(1).

Rather, at page 2, line 11, through page 7, of the Request, Appellant presents new arguments not raised in the briefs before the Board. Such new arguments will not be considered. ("Arguments not raised in the briefs before the Board and evidence not previously relied upon in the brief and any reply brief(s) are not permitted in the request for rehearing except as permitted by paragraphs (a)(2) and (a)(3) of this section." 37 C.F.R. § 37 C.F.R. § 41.52(a)(1)).

DECISION

In view of the foregoing discussion, we grant Appellant's Request for Rehearing to the extent of reconsidering our decision based on Appellant's above cited contention and Appellant's prior briefs, but we deny Appellant's request with respect to making any change thereto.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(v).

REQUEST FOR REHEARING DENIED

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